

EMPLOYMENT DEVELOPMENT DEPARTMENT

Amendment of Title 22, California Code of Regulations, Sections 926-3, 926-4, and 926-5

TAXABLE VALUE OF MEALS AND LODGING

Text of Proposed Amendments

NOTE: Language to be repealed is shown in ~~strikeout~~ format; language to be added is shown in underline format.

AMEND SECTION 926-3 TO READ:

§ 926-3. Taxable Value of Board and Lodging.

(a) Board, lodging, or any other payment in kind, received by an employee in addition to, or in lieu of cash wages, shall be taxable on the basis of a reasonably estimated cash value to the employee, as determined or approved by the department as hereinafter provided:

(1) The reasonably estimated cash value of meals, lodging, or other payment in kind to an employee shall not be deemed less than:

(A) The bona fide value stipulated in a union agreement or contract of employment; or

(B) The value established as a basis of compliance with any applicable law governing minimum wages.

(2) Meals. In those cases where subdivision (a)(1) is not applicable, the department shall consider the following scale to be a reasonably estimated cash value of meals to employees:

For the calendar year ~~2008~~ 2009 and thereafter except as modified herein in accordance with the following provisions of this subdivision:

Three meals per day	\$9.60	<u>\$10.00</u>
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Individual meals:

Breakfast	\$2.10	<u>\$2.20</u>
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Lunch	\$2.90	<u>\$3.00</u>
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Dinner	\$4.60	<u>\$4.80</u>
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A meal not identifiable as either breakfast,

lunch, or dinner	\$3.35	<u>\$3.50</u>
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Whenever the average of retail prices of foods in California cities during the twelve months of any fiscal year ending on June 30 varies from the average of prices during the same months ending on June 30, 1969, by 10 percent or more, according to the cost of living indexes published by the United States Department of Labor, Bureau of Labor Statistics, the director shall by authorized regulation modify the ~~2008~~ 2009 scale for meals upward or downward in substantially the same ratio for the ensuing calendar year.

If, however, it can be shown to the satisfaction of the department in any case that the scale as determined herein exceeds 120 percent of the cost of the raw materials

used in preparing meals for employees, the department shall consider 120 percent of the cost of such raw materials to be the basis for a reasonably estimated value of meals to employees.

(3) Lodging.

(A) As a general rule, in those cases where subdivision (a)(1) is not applicable, the department shall consider a reasonable estimated cash value of lodging to an employee, for the calendar year ~~2008~~ 2009 and thereafter except as modified in accordance with this subdivision, to be 66 2/3 percent of the ordinary rental value to the public but not in excess of ~~\$1,092.00~~ \$1,145.00 per month or less than ~~\$35.40~~ \$37.20 per week. The following examples illustrate the computation of taxable wages in such cases:

EXAMPLE A

Ordinary rental value to public of	
lodging per month	\$ 500
Cash value of lodging to employee (66 2/3	
percent of \$500 equals \$333.33) . .	\$ 333.33 Taxable Wages

EXAMPLE B

Ordinary rental value to public of	
lodging per month	\$1,650.00 <u>\$1,750.00</u>
Cash value of lodging to employer (66 2/3	
percent of \$1,650.00 <u>\$1,750.00</u> equals	
\$1,100.00 <u>\$1,167.00</u> . The cash value for	
2008 <u>2009</u> cannot be in excess of	
\$1,092.00 <u>\$1,145.00</u>).	\$1,092.00 <u>\$1,145.00</u> Taxable Wages

EXAMPLE C

Ordinary rental value to public of	
lodging per week	\$50
Cash value of lodging to employee	
(66 2/3 percent of \$50.00 equals	
\$33.33. The cash value for	
2008 <u>2009</u> cannot be less than	
\$35.40 <u>\$37.20</u> ; 4 weeks times	
\$35.40 <u>\$37.20</u> equals	
\$141.60 <u>\$148.80</u>)	\$141.60 <u>\$148.80</u> Taxable Wages

(B) In those cases where subdivision (a)(1) is not applicable, if the employee receives part of his or her lodging in exchange for a cash payment and part in exchange for services rendered, the department shall consider that only the part received in exchange for services rendered is received in lieu of cash wages. The amount of the cash payment by the employee shall be deducted from the ordinary rental value of the lodging to the public, and the reasonably estimated cash value of the remainder, which is the part received by the employee in lieu of cash wages, shall be 66 2/3 percent of the ordinary rental value to the public but not in excess of ~~\$1,092.00~~ \$1,145.00 per month. The following examples illustrate the computation of taxable wages in such cases:

EXAMPLE A

Ordinary rental value to public of lodging		
per month	\$660	
Employee pays cash for lodging	<u>60</u>	
Remainder	<u>600</u>	
Cash value of lodging to employee (66 2/3 percent of \$600 equals \$400) . . .	\$400	Taxable Wages

EXAMPLE B

Ordinary rental value to public of lodging		
per month	\$400	
Employee pays cash for lodging	<u>190</u>	
Remainder	<u>210</u>	
Cash value of lodging to employee (66 2/3 percent of \$210 equals \$140) . . .	140	Taxable Wages

(C) Whenever the average of residential rent prices in the Los Angeles, San Diego, and San Francisco Metropolitan Areas during the twelve months of any fiscal year ending on June 30 varies from the average of prices during the same months ending on June 30, 1973, by 10 percent or more, according to the residential rent indexes published by the United States Department of Labor, Bureau of Labor Statistics, the director shall by authorized regulation modify the ~~2008~~ 2009 scale of maximum and minimum rates for lodging upward or downward in substantially the same ratio for the ensuing calendar year.

(4) Where there are unusual facts and circumstances which make any of the foregoing inapplicable, the department shall consider reasonably estimated cash value of meals or lodging to the employees.

(b) Employers shall maintain reasonably complete records of meals and lodging furnished employees as a part of their remuneration. Such records shall be in such form as to show the number and kind of meals actually consumed by employees. If, in any case, an employee objects to the amount of deductions made for contributions on the ground that the value and number of meals furnished or the value of any remuneration in kind is erroneous, he or she may protest to the department and request a determination thereon.

(c) It is immaterial for the purposes of this section that the facilities furnished by the employer are furnished for his or her convenience or the convenience of the employee.

(d) The provisions of this section shall not be construed to include as taxable wages items expended on behalf of the employer and designated as traveling allowance.

(e) This section is not applicable to meals and quarters furnished officers and crew members aboard merchant vessels, or the meals and quarters received by fishermen except as specifically provided in Sections 926-4 and 926-5 of these regulations.

(f) No right or cause of action founded upon any scale of reasonably estimated cash value of meals to employees in effect under provisions existing prior to the amendment of this section shall be abolished or impaired by such amendment.

NOTE: Authority cited: Sections 305, 306 and 310, Unemployment Insurance Code.
Reference: Section 926, Unemployment Insurance Code.

AMEND SECTION 926-4 TO READ:

§ 926-4. Taxable Value of Meals and Quarters Furnished Officers and Crewmen Aboard Vessels.

(a) Meals and quarters received by officers and crewmen aboard a vessel shall be taxable on the basis of a reasonably estimated cash value to the employee as determined or approved by the department as hereinafter provided:

(1) The reasonably estimated cash value of meals and quarters to an employee shall not be less than:

(A) The bona fide value stipulated in a union agreement or contract of employment; or

(B) The value established as a basis of compliance with any applicable law governing minimum wages.

(2) In those cases where subdivision (a)(1) is not applicable the department shall consider the following scale to be the reasonably estimated cash value to the employee of meals and quarters for the calendar year ~~2008~~ 2009 and thereafter, except as modified herein in accordance with the following provisions of this subdivision:

(A) Licensed Personnel. For each day or part of a day aboard a vessel, ~~\$9.60~~ \$10.00 for meals plus ~~\$7.40~~ \$7.70 for quarters, or a total of ~~\$17.00~~ \$17.70.

(B) Unlicensed Personnel. For each day or part of a day aboard a vessel, ~~\$9.60~~ \$10.00 for meals plus ~~\$5.00~~ \$5.30 for quarters, or a total of ~~\$14.60~~ \$15.30.

(C) Adjustment of Meals Values. Whenever the average of retail prices of foods in California cities during the twelve months of any fiscal year ending on June 30 varies from the average of prices during the same months ending on June 30, 1969, by 10 percent or more, according to the cost of living indexes published by the United States Department of Labor, Bureau of Labor Statistics, the director shall by authorized regulation modify the ~~2008~~ 2009 scale for meals upward or downward in substantially the same ratio for the ensuing calendar year.

If, however, it can be shown to the satisfaction of the department in any case that the scale as determined herein exceeds 120 percent of the cost of the raw materials used in preparing meals for employees, the department shall consider 120 percent of the cost of such raw materials to be the basis for a reasonably estimated value of meals to employees.

(D) Adjustment of Quarters Values. Whenever the average of residential rent prices in the Los Angeles, San Diego, and San Francisco Metropolitan Areas during the twelve months of any fiscal year ending on June 30 varies from the average of prices during the same months ending on June 30, 1973, by 10 percent or more, according to the residential rent indexes published by the United States Department of Labor, Bureau of Labor Statistics, the director shall by authorized regulation modify the ~~2008~~ 2009 scale of rates for quarters upward or downward in substantially the same ratio for the ensuing calendar year.

(b) "Vessel" as used in this section includes freighter, tanker, passenger or any other vessel, except fishing vessels. (Fishing Vessels -- See Section 926-5.)

(c) "Licensed personnel" as used in this section includes masters, mates, engineers, pilots, radio telegraphers and any other persons who are licensed pursuant

to the United States Shipping Code, and also includes pursers and surgeons and any other persons who are registered pursuant to the United States Shipping Code.

(d) "Unlicensed personnel" as used in this section includes all members of the crew other than persons described in subdivision (c) of this section.

(e) Notwithstanding the provisions of subdivision (a)(2) of this section, if an employer maintains records in such form as to show the number and kind of meals actually consumed by employees the scale for individual meals set forth in subdivision (a)(2) of section 926-3 of these regulations may apply.

(f) It is immaterial for the purposes of this section that the facilities furnished by the employer are furnished for his or her convenience or the convenience of the employee.

(g) No right or cause of action founded upon provisions for the reasonably estimated cash value to officers and crewmen aboard vessels of meals and quarters in effect prior to the amendment of this section shall be abolished or impaired by such amendment.

NOTE: Authority cited: Sections 305, 306 and 310, Unemployment Insurance Code.
Reference: Section 926, Unemployment Insurance Code.

AMEND SECTION 926-5 TO READ:

§ 926-5. Taxable Value of Meals and Quarters Received by Fishermen Aboard Fishing Vessels.

(a) Meals and quarters received by fishermen aboard fishing vessels shall be taxable on the basis of a reasonably estimated cash value to the employee as determined or approved by the department as hereinafter provided:

(1) Meals. The value of meals may be computed on one of the following bases, at the option of the employer:

(A) The cost of food furnished to or consumed by fishermen shall be equally divided by the number of fishermen to determine the taxable value of meals to each fisherman.

(B) If an employer maintains records in such form as to show the number and kind of meals actually consumed by fishermen the scale as set forth in Section 926-3(a)(2) of these regulations may be applied.

(2) Quarters.

(A) For the calendar year ~~2008~~ 2009 and thereafter except as modified in accordance with this subdivision, quarters furnished fishermen aboard fishing vessels have a cash value to the employee of ~~\$35.40~~ \$37.20 a week, or ~~\$5.00~~ \$5.30 a day for periods less than a week, where the facilities include the following minimum standards:

1. Living compartment space that normally permits standing erect.
2. Heat, light and ventilation.
3. Gear locker.
4. Head and bathing facilities.
5. Individual bunks or berths with mattresses, assigned to each fisherman.

(B) Quarters which do not meet the above minimum standards have no cash value to the fishermen.

(3) Adjustment of Quarters Values. Whenever the average of residential rent prices in the Los Angeles, San Diego, and San Francisco Metropolitan Areas during the twelve months of any fiscal year ending on June 30 varies from the average of prices during the same months ending on June 30, 1973, by 10 percent or more, according to the residential rent indexes published by the United States Department of Labor, Bureau of Labor Statistics, the director shall by authorized regulation modify the ~~2008~~ 2009 scale of rates for quarters upward or downward in substantially the same ratio for the ensuing calendar year.

(b) It is immaterial for the purposes of this section that the cost of food consumed aboard fishing vessels is borne by the employer, by the employees or is shared by the employer and employees. The following examples illustrate the computation of taxable wages under two methods of accounting where the employer elects to apply the formula set forth in subdivision (a)(1)(A) of this section. It is assumed that the share for the owner or operator of the vessel is 40 percent and the fishermen's share is 60 percent.

EXAMPLE A.

All operating expenses, including the cost of food consumed aboard, are deducted from the gross receipts from sale of the catch. The remainder is divided into two shares, one for the owner or operator of the vessel and the other to be distributed among the fishermen. The fishermen's cash wages plus the total cost of food constitute taxable wages.

Gross proceeds from sale of the catch	\$1,000	
Less fuel and other operating expenses	\$200	
Less cost of food	100	<u>300</u>
		<u>700</u>
Less: Owner or operator's share (40 percent) . . .		<u>280</u>
Fishermen's share (60 percent) (cash wages)		420
Add cost of food consumed		<u>100</u>
Total	\$ <u>520</u>	Taxable wages

- (i) Taxable wages each person, assuming 5 men with equal shares -- \$104.
- (ii) Taxable wages each person, assuming 5 men, 1 man having 2 shares, and 4 men having 1 share each:

	<i>Cash</i>	<i>Add cost of food</i>	<i>Total taxable wages</i>
Fisherman "A"	\$140	\$ 20	\$160
Fisherman "B"	70	20	90
Fisherman "C"	70	20	90
Fisherman "D"	70	20	90
Fisherman "E"	<u>70</u>	<u>20</u>	<u>90</u>
	\$420	\$100	\$520

EXAMPLE B.

All operating expenses, except cost of food consumed aboard, are deducted from the gross receipts from sale of the catch. The remainder is divided into two shares, one for the owner or operator of the vessel and the other to be distributed among the fishermen. The amount of the fishermen's share before deduction of the cost of food constitutes taxable wages.

Gross proceeds from sale of the catch .	\$1,000	
Less fuel and other operating expenses .	<u>200</u>	
	<u>800</u>	
Owner or operator's share (40 percent) .	<u>320</u>	
Fishermen's share (60 percent)	480	Taxable wages
Less cost of food	<u>100</u>	
Cash wages	\$ <u>380</u>	

- (i) Taxable wages each person, assuming 5 men with equal shares -- \$96.
- (ii) Taxable wages each person, assuming 5 men, 1 man having 2 shares, and 4 men having 1 share each:

	<i>Total Taxable wages</i>	<i>Less cost of food</i>	<i>Cash</i>
Fisherman "A"	\$160	\$ 20	\$140
Fisherman "B"	80	20	60
Fisherman "C"	80	20	60
Fisherman "D"	80	20	60
Fisherman "E"	<u>80</u>	<u>20</u>	<u>60</u>
	\$480	\$100	\$380

(c) "Fishermen" as used in this section includes all persons aboard the vessel who are entitled to receive a share-of-the-catch or who are remunerated on any other basis.

(d) It is immaterial for the purposes of this section that the facilities furnished by the employer are furnished for his or her convenience or the convenience of the employee.

(e) No right or cause of action founded upon provisions for the reasonably estimated cash value to fishermen of meals and quarters in effect prior to the amendment of this section shall be abolished or impaired by such amendment.

NOTE: Authority cited: Sections 305, 306 and 310, Unemployment Insurance Code.
Reference: Section 926, Unemployment Insurance Code.
